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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/718,708	11/24/2003	Atsushi Murase	501.43028X00	9930
24956 7590 10/26/2007 MATTINGLY, STANGER, MALUR & BRUNDIDGE, P.C. 1800 DIAGONAL ROAD SUITE 370 ALEXANDRIA, VA 22314			EXAMINER WALSH, JOHN B	
			ART UNIT 2151	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/718,708

Applicant(s)

MURASE ET AL.

Examiner

John B. Walsh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. ____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 11/24/03
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 11 and 12 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 11 is rejected as falling under the judicial exception of an abstract idea which lacks a useful, concrete, and tangible result. A claimed series of steps or acts that do not result in a useful, concrete, and tangible result are not statutory within the meaning of 35 USC 101. In the instant case, the claims recite, “instructing”. However, no useful, concrete, and tangible result is claimed. Absent such a result, however, the claims are not statutory.

Claim 12 lacks the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, functional descriptive material *per se*.

Descriptive material can be characterized as either “functional descriptive material” or “nonfunctional descriptive material.” Both types of “descriptive material” are nonstatutory when claimed as descriptive material *per se*, 33 F.3d at 1360, 31 USPQ2d at 1759. When functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of

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technology permits the function of the descriptive material to be realized. Compare *In re Lowry*, 32 F.3d 1579, 1583-84, 32 USPQ2d 1031, 1035 (Fed. Cir. 1994)

Merely claiming nonfunctional descriptive material, i.e., abstract ideas, stored on a computer-readable medium, in a computer, or on an electromagnetic carrier signal, does not make it statutory. See *Diehr*, 450 U.S. at 185-86, 209 USPQ at 8 (noting that the claims for an algorithm in *Benson* were unpatentable as abstract ideas because “[t]he sole practical application of the algorithm was in connection with the programming of a general purpose computer.”).

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, 6 and 10-13 recite the term “should be” which renders the claim indefinite since it is unclear if the limitation following this term is a positive limitation.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an

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international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1- 13 as best understood are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 7,107,339 to Wolters.

As concerns claim 1, a control system comprising: a control computer (120; column 3, lines 44-52); and a computer (figure 1; 106) monitored by said control computer; wherein said control computer includes: an interface (201) for receiving an operation performance metric value (column 5, lines 13-24; column 5, line 59-column 6, line 13) of each of a plurality of first monitored items (column 5, lines 25-35; column 3, lines 20-29) from said monitored computer, and a control section (202) for, based on said operation performance metric value of said each first monitored item, determining a second monitored item (column 5, lines 25-35; column 3, lines 20-29) whose data should be obtained and issuing an acquisition instruction instructing said monitored computer to obtain an operation performance metric value (column 5, lines 13-24) of said second monitored item, said second monitored item being associated (each are associated with the network, thus they are associated with each other) with said each first monitored item; and wherein said monitored computer includes: an interface (inherent network interface of 106) for receiving said acquisition instruction from said control computer, and a control section (112) for, based on said acquisition instruction, obtaining said operation performance metric value of said second monitored item and transmitting it to said control computer.

As concerns claim 2, the control system as claimed in claim 1, wherein said control section of said control computer determines said second monitored item based on an expected value (column 5, line 59-column 6, line 13; column 6, line 57; column 6, lines 59-61) calculated

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by use of said operation performance metric value of said each first monitored item, said second monitored item being associated with said each first monitored item.

As concerns claim 3, the control system as claimed in claim 2, wherein said expected value is calculated based on said operation performance metric value of said each first monitored item by assuming that acquisition of said expected value and that of said operation performance metric value of said each first monitored item fall on either a same hour, a same day of the week, a same date, or a same month (column 5, lines 46-57; column 5, lines 13-24), said operation performance metric value of said each first monitored item being previously obtained (column 6, lines 59-61).

As concerns claim 4, the control system as claimed in claim 1, wherein a plurality of said second monitored items (column 5, lines 25-35; column 3, lines 20-29) are employed.

As concerns claim 5, the control system as claimed in claim 4, wherein: priority is given to each of said second monitored items (column 10, lines 29-47); and said control section of said control computer determines said second monitored item whose data should be obtained based on said priority (column 10, lines 29-47).

As concerns claim 6, the control system as claimed in claim 1, wherein said control section of said control computer determines a degree of risk (column 10, lines 29-47) of said control system based on said operation performance metric value of said each first monitored item and determines a second monitored item (column 5, lines 25-35; column 3, lines 20-29; column 4, lines 35-55) whose data should be obtained based on said degree of risk, said second monitored item being associated with said each first monitored item.

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As concerns claim 7, the control system as claimed in claim 1, wherein said control section of said control computer determines a degree of risk (column 10, lines 29-47) of said control system based on said operation performance metric value of said each first monitored item, determines a second monitored item (column 5, lines 25-35; column 3, lines 20-29; column 4, lines 35-55) whose data should be obtained and an acquisition interval (column 5, lines 13-24; column 5, lines 46-57) based on said degree of risk, and issues an acquisition instruction instructing said monitored computer to obtain an operation performance metric value of said second monitored item at said determined acquisition intervals, said second monitored item being associated with said each first monitored item.

As concerns claim 8, the control system as claimed in claim 1, wherein each monitored item includes information indicating the type of a performance characteristic of at least one of an application server, a database server, a storage device, and a program (column 3, lines 20-29).

As concerns claim 9, the control system as claimed in claim 1, wherein said performance characteristic includes information indicating at least one of a CPU usage rate, a memory usage rate, and a disk usage rate (column 5, lines 25-35; column 3, lines 20-29).

As concerns claim 10, a control computer for monitoring an operational state of a system, comprising: an interface (201) for receiving an operation performance metric value (column 5, lines 13-24; column 5, line 59-column 6, line 13) of each of a plurality of first monitored items from a monitored computer; and a control section (202) for, based on said operation performance metric value of said each first monitored item, determining a second monitored item (column 5, lines 25-35; column 3, lines 20-29; column 4, lines 35-55) whose

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data should be obtained and instructing said monitored computer to obtain an operation performance metric value of said second monitored item, said second monitored item being associated with said each first monitored item.

As best understood concerning claim 11, a control method for monitoring an operational state of a system, comprising the steps of: based on an operation performance metric value (column 4, lines 55-65; column 5, lines 13-24) of each of a plurality of first monitored items received from a monitored computer object (column 3, lines 44-52; column 5, lines 25-34), determining a second monitored item (column 3, lines 44-52; column 5, lines 25-34) whose data should be obtained, said second monitored item being associated with said each first monitored item (each are associated with the network, thus they are associated with each other; and/or data is for the same network device); and instructing said monitored computer to obtain an operation performance metric value (column 5, lines 13-24) of said second monitored item.

As best understood concerning claim 12, a control program for monitoring an operational state of a system, causing a computer to perform the steps of: based on an operation performance metric value (column 5, lines 13-24; column 5, line 59-column 6, line 13) of each of a plurality of first monitored items received from a monitored computer object, determining a second monitored item (column 5, lines 25-35; column 3, lines 20-29; column 4, lines 35-55) whose data should be obtained, said second monitored item being associated with said each first monitored item (each are associated with the network, thus they are associated with each other); and instructing said monitored computer to obtain an operation performance metric value (column 5, lines 13-24; column 4, lines 35-55; column 6, lines 59-61) of said second monitored item.

As concerns claim 13, a control system comprising: a control computer (120; column 3, lines 44-52); and a computer (figure 1; 106) monitored by said control computer; wherein said monitored computer includes: a control section (112) for, based on an operation performance metric value (column 5, lines 13-24) of each of a plurality of first monitored items, determining a second monitored item (column 5, lines 25-35; column 3, lines 20-29; column 4, lines 35-55) whose data should be obtained and obtaining an operation performance metric value (column 5, lines 13-24) of said second monitored item, said second monitored item being associated with said each first monitored item, and an interface (inherent network interface for 106) for transmitting said obtained operation performance metric value; and wherein said control computer includes: an interface (201) for receiving said operation performance metric value from said monitored computer, and a control section (202) for monitoring an operational state of a system based on said operation performance metric value.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John B. Walsh whose telephone number is 571-272-7063. The examiner can normally be reached on Monday-Thursday from 7:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Follansbee can be reached on 571-272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



John B. Walsh
Primary Examiner
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